APPENDIX

ANALYSIS OF CASES CITED BY PETITIONER IN SUPPORT OF POINT IV (a)

(Petitioner's Brief, pp. 23, 24)

Hill v. Chicago & Evanston R. R. Co., 140 U. S. 52, at 53-55.

A decree was entered final as to some of the defendants and interlocutory as to others. No appeal was taken from that portion of the decree which was final. Held, that the decree was severable; that on appeal from a subsequent decree fixing the amount recoverable from those defendants over whom the court retained jurisdiction, the propriety of the previous decree dismissing the appeal as to other parties was not open for examination, they being no longer parties to the suit.

Sutton v. Gulf Smokeless Coal Co., 77 F. (2d) 439, 441.

After appeal from an interlocutory decree and remand to the District Court to assess damages, on appeal from the latter no question decided in the former appeal was open for examination.

United States v. Van Blargen, 60 F. (2d) 874, 875.

There was no appeal from a final decree, but an attempt by independent proceedings to set aside the decree for lack of service, which was allowed, and,

on appeal by the government, defendant attempted to have merits of final decree re-examined. Held, question of service only was before the appellate court.

Casals v. Fernandez, 40 F. (2d) 831, 832.

After two trials and two appeals, a rule of evidence had been established and on final judgment legitimacy of a child declared. No appeal having been taken from the adjudication as to the rule of evidence, it was not open for re-examination.

Sun Company v. Vinton Petroleum Co., 248 F. 623, 625.

An appeal taken from an interlocutory decree. On remand trial court refused to consider cross complaint. On appeal from final decree, over vigorous dissent, Circuit Court of Appeals held decision on previous appeal decided all matters raised or which could have been raised.

Guaranty Trust Co. v. International Pump Co., 242 F. 920-921.

A final decree provided for taxation of costs against intervenor in appeal taken by him. Affirmed, and on remand costs were taxed. On appeal from such taxation, held that decision by Circuit Court of Appeals on appeal from final decree which contained proviso for such taxation, complainant could not reopen the question.

Quinton v. Neville, 154 F. 432, 434.

A final decree directed sale of real estate to satisfy a lien. No appeal taken, but a writ of review was sought which was denied. Held, on appeal from a supplementary order directing sale by special master instead of by private sale, the question of validity of the final decree could not be raised.

Burns v. Cooper, 153 F. 148, 151.

An appeal was taken from a final decree subjecting to the lien of a mortgage not only the wife's life estate, but after acquired interest therein. Reversed, holding that only life estate was subject to lien. After remand, the wife asked for a decree leaving open the question, whether she had less than a life estate. The trial court refused, and on appeal from that decision it was held that the first appeal settled the nature of her estate and the question was *res judicata*, particularly in view of the fact that on first appeal she had insisted that her interest was a life estate.

Chase v. Driver, 92 F. 780.

After final decree mortgaged property was sold and sale confirmed. No appeal taken therefrom. After accounting to determine whether there was a deficiency between amount derived from sale and amount due mortgagee, the redemptionor appealed and sought to challenge the provisions of the final decree of sale and order of confirmation. Held, he was foreclosed from so doing.

AUTHORITIES CITED BY PETITIONER IN SUPPORT OF POINT IV (b)

Illinois v. Illinois Central R. R. Co., 184 U. S. 77, at 91-93.

On appeal from a final decree the court fixed the rights of the parties dependent on the existence or non-existence of certain facts and remanded the case for determination of those facts. From the decree making such determination an appeal was taken and appellant endeavored to raise questions decided on a previous appeal. Held, to be *res judicata*.

United States v. Camou, 184 U. S. 572, 575.

Held, that where appellate court has issued its mandate a second writ of error brings up only errors in proceedings subsequent to the mandate.

In re Potts, 166 U. S. 263, 267.

On an earlier appeal the Supreme Court held patent valid and infringed and remanded case for further proceedings. Held, that lower court, without express leave of Supreme Court, could not grant new trial for newly discovered evidence, or permit new defenses to be brought in by amendment.

To the same effect are,

Roberts v. Cooper, 20 How. 467, 481;
United States v. Bollman, 81 F. (2d) 1009, 1010;
Keeler v. Fred T. Ley & Co., 65 F. (2d) 499, 501;
Turner v. Kirkwood, 62 F. (2d) 256;
Bissell Carpet-Sweeper Co. v. Goshen Sweeper Co., 72 F. 545, 555.

Gregory v. Pike, 77 F. 241, merely holds that a rule of law laid down by the appellate court in one appeal is the law of the case and cannot be re-examined.

CASES CITED UNDER PETITIONER'S POINT IV (c)

McLish v. Ruff, 141 U. S. 661,

holds that appeal does not lie from a demurrer to the jurisdiction of the court, but must await the final decree.

Heike v. United States, 217 U. S. 423,

holds that no appeal lies from a special plea in bar claiming immunity from prosecution, but must await a final judgment.

Forgay v. Conrad, 6 How. 201, 206.

The court criticized the lower court for making a decree final by authorizing an execution to enforce the same and retaining jurisdiction for certain other related matters. Later cases, such as *McGourkey v. Toledo & Ohio C. Ry. Co.*, 146 U. S. 536, 545, and *Beebe v. Russell*, 19 How. 283, 287, distinguish, if they do not criticize *Forgay v. Conrad* by pointing out that the fact that execution has been awarded was the only ground upon which the finality of the decree could be supported.

Arnold v. United States, 263 U. S. 427,

holds that a decree for the amount of the penalty of a public contractor's bond retaining jurisdiction to

determine the amount due the subcontractors and materialmen is an interlocutory and not a final decree.

Collins v. Miller, 252 U. S. 364-370,

held that a writ of habeas corpus, which was allowed as to one charge and denied as to two others, but retained the accused to await further action of the District Court was not final, but interlocutory, and no appeal would lie.

Rexford v. Brunswick-Blake-Colender Co., 228 U. S. 339,

held that no appeal would lie from an order which determined the question of title, but which referred to the master the question of the identity of trees which the defendants were entitled to remove was interlocutory and not final.

Covington v. Covington First Nat'l. Bank, 185 U. S. 270, 277,

permanently enjoined the assessment and collection of taxes upon defendant's capital stock for all periods prior to March 21, 1900, and retained jurisdiction with regard to assessments made between the date of the entry of the judgment and the expiration of defendant's existing articles of incorporation. Held, to be an interlocutory and not a final decree and unappealable.

Southern Ry. Co. v. Postal Telegraph Co., 179 U. S. 641.

In a condemnation suit before damages were assessed no appeal could be taken from an order sustaining a demurrer to the defendant's answer because not final.

Cole v. Rustgard, 68 F. (2d) 316,

holds that an order quashing service of summons is not appealable because not final.

Wright v. Taft-Peirce Mfg. Co., 287 F. 131,

holds that an order granting a new trial is not a final order and therefore not appealable.

Satterlee v. Harris, 60 F. (2d) 490, 491,

held that an order denying an application by creditors to dismiss their claims without prejudice was not final and unappealable.